



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: Capitol Police Employed by Senate; Lump-Sum Leave Payment

File: B-255655

Date: September 27, 1994

DIGEST

Section 202 of Pub. L. No. 102-397 authorizes the Secretary of the Senate to make to an officer or member of the Capitol Police who separates from service with the Capitol Police a lump-sum payment for the accumulated and current accrued annual leave to which that individual is entitled if, at the time of separation, the officer or member satisfies the age and service requirements for title to an immediate annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, regardless of whether the individual's separation from service is in the form of retirement.

DECISION

This decision responds to an inquiry from the Financial Clerk of the Senate, Office of the Secretary of the Senate, asking whether lump-sum leave payments for accrued annual leave may be made to officers or members of the Capitol Police who are paid by the Secretary of the Senate when they separate from service for reasons other than retirement. For the reasons given below, we conclude that section 202 of Pub. L. No. 102-397, 106 Stat. 1951 (1992) (40 U.S.C. § 207a note (Supp. IV 1992)), authorizes such payments.

Background

Officers and members of the Capitol Police historically have been paid either by the Clerk of the House of Representatives or the Secretary of the Senate and their compensation, benefits, and leave have been determined by their status as employees of the paying authority.¹

¹ Section 102 of Pub. L. No. 102-397, 106 Stat. 1950 (1992) added section 9C to the act of July 31, 1946, ch. 707 (40 U.S.C. § 207a), by providing that:

"Payroll administration for the Capitol Police and civilian support personnel of the Capitol Police shall be carried out on a unified basis by a single disbursing authority. The Capitol Police Board, with the approval of the Committee on
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Officers and members of the Capitol Police who are paid by the Secretary of the Senate do not receive paid annual leave by statute.² Instead, the Capitol Police Board has provided annual leave for officers and members of the Capitol Police by regulation. Police Manual for the Capitol Police, (Revised edition effective August 1, 1975), Section 14. As a result, when officers or members separate from service, they are not entitled to a lump-sum payment for accumulated and current accrued annual leave under the statute applicable to most federal employees, 5 U.S.C. § 5551(a)(Supp. IV 1992).³

Consequently, the practice developed of placing officers and members who separated from service with the Capitol Police in terminal leave status until their leave was used. Since these officers remained on the payroll until their leave was used, they could not be replaced by new hires and overtime was paid to other officers or members to staff posts of those on terminal leave. We reported these facts to the Chairman of the Capitol Police Board in Capitol Police: Administrative Improvements and Possible Merger with the Library of Congress Police at page 9 (GAO/AFMD-91-28, B-228679, Feb. 28, 1991).⁴

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House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate, acting jointly, shall, by contract or otherwise, provide for such unified payroll administration."

The unified payroll system was made applicable to pay periods beginning after September 30, 1992. However, annual Legislative Branch Appropriation Acts have continued to expressly divide the amount appropriated for the Capitol Police Board under the heading "Capitol Police, Salaries" between the Sergeant at Arms of the House of Representatives, to be disbursed by the Clerk of the House, and the Sergeant at Arms and Doorkeeper of the Senate, to be disbursed by the Secretary of the Senate. E.g., Legislative Branch Appropriations Act, 1994, Pub. L. No. 103-69, 107 Stat. 700 (1993).

² The annual and sick leave provisions of subchapter I of chapter 63 of title 5, United States Code, do not apply to employees of either House of Congress or of the two Houses, 5 U.S.C. § 6302(2)(vi).

³ Lump sum leave payments are not authorized under 5 U.S.C. 5551(a) for nonstatutory leave systems. B-196718, Jan. 22, 1980.

⁴ The Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 27, 28 (1993), was enacted after our report. While section 501 of the Act extends certain uncompensated leave benefits to employees whose pay is disbursed by the Secretary of the Senate, neither this act nor any other statute with which we are aware grants officer or members of the Capitol Police paid leave within the scope of 5 U.S.C. § 5551(a).

To address these and other matters, Congress enacted Pub. L. No. 102-397, 106 Stat. 1951, (1992) (40 U.S.C. § 207a note (Supp. IV 1992)). Section 202 of this Act provides:

"An officer or member of the United States Capitol Police who separates from service within the 2-year period beginning on [October 6, 1992] and who, at the time of separation, satisfies the age and service requirements for title to an immediate annuity under subchapter III of chapter 83 [Civil Service Retirement System] or chapter 84 [Federal Employees' Retirement System] of title 5, United States Code, shall be entitled to receive a lump-sum payment for the accumulated and current accrued annual leave to which the individual is entitled, but only to the extent that such leave is attributable to service performed by such individual as an officer or member of the Capitol Police."⁵

The Senate Financial Clerk asks whether section 202 authorizes lump-sum payments for accrued annual leave for two Capitol Police officers on the Senate payroll who separated, but did not retire, from service between October 6, 1992 and October 5, 1994.

One case involves an officer who died in 1993, whose widow is entitled to receive a survivor's annuity based on her late husband's age and service. The other case involves an officer who separated from the Capitol Police and, after a brief break in service, returned to government service with a different agency. At the time of their separation, both officers met the applicable age and service requirements. While both cases clearly fall within the literal language of section 202, the Senate Financial Clerk's request is prompted by a "possible divergence" between the language of section 202 and references in its legislative history to providing lump sum payments to officers or members who actually retired.

Discussion

The goal of statutory construction is simply stated: to determine and give effect to the intent of the enacting legislature. Philbrook v. Glodgett, 421 U.S. 707, 713 (1975). Further, when determining the legislative intent "the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished." Estate of Cowart v. Nicklos Drilling Co., 112 S. Ct. 2589, 2594 (1992). In our opinion, section

⁵ Five months earlier, the Senate had adopted a resolution authorizing the Secretary of the Senate to make lump-sum payments to members or employees whose pay is disbursed by the Secretary who are separated from service with the Capitol Police before May 5, 1994, for the accumulated and current annual leave to which the members or employees are entitled. S. Res. 292, 102d Cong., 2d Sess., (a),(f), reprinted in 138 Cong. Rec. S5996 (daily ed. May 5, 1992). In his request, the Financial Clerk of the Senate observes that section 202 was "evidently intended to supersede" S. Res. 292.

202 is clear on its face. The law entitles an officer or member who separates from service to a lump-sum leave payment for accumulated and current accrued annual leave to which the individual is entitled if, at the time of separation, the individual satisfies the age and service requirements for an immediate annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code.

In the lexicon of employment law, "separation" is a term of general application encompassing the various ways an employee's employment with a particular employer ends. For example, the Federal Personnel Manual (FPM) has long referred to resignations, optional retirement, and accepting employment in another agency without a break in service as voluntary separations. FPM Chapter 715, Inst. 237 (Dec. 21, 1976). In contrast, the FPM explicitly states that accepting a new appointment in the same agency without a break-in service is not a separation. FPM Chapter 715-7, sec. 3-3b (July 1969). The FPM also identifies various types of agency initiated terminations that are characterized as separations. *E.g.*, FPM Supplement 296-33, Subchapter 31-2 (Inst. 41, January 8, 1993); FPM Supplement 830-1, section 44A1.1-2 (Inst. 03, October 1989). Nothing in the language of section 202 conditions the officer's or member's entitlement to a lump-sum leave payment on the type of separation involved, whether retirement or otherwise.

Further, the language of section 202 and section 203 (a)(2) of Public Law 102-397⁶ clearly indicates that the "service" from which separation is required in order to become entitled to the lump-sum leave payment is service performed as an officer or member of the Capitol Police, not service with the federal government generally. Thus, in the context of the language of sections 202 and 203, once an officer's or member's service in the Capitol Police ends, the fact that the former officer or member may serve the federal government in some other department or agency is not relevant to the application of the lump sum payment provisions of Public Law 102-397.

Finally, there are references in the legislative history in the House of Representatives to members "retiring" from the Capitol Police⁷. Retiring officers and members of the

⁶ Section 203(a)(2) provides that a lump-sum leave payment under section 202 shall be paid "in the case of an officer or member whose pay (for service last performed before separation) is disbursed by the Secretary of the Senate."

⁷ *E.g.*, H.R. Rep. No. 648, 102d Cong., 2d Sess. 9 (July 2, 1992) ("This section refers to members of the Capitol Police who are separating from service due to retirement only."); 138 Cong. Rec. H 5989 (daily ed. July 7, 1992) (statement of Rep. Oaker) ("The final area addressed in the legislation is the lump-sum payment which would be available to . . . Capitol Police who are separating from service because of retirement."); 138 Cong. Rec. H8910 (daily ed. Sept. 22, 1992) (statement of Rep. Roberts) (" . . . This legislation . . . also provides a cost savings by authorizing a temporary lump-sum payment for retiring members from the force.").

Capitol Police were without question the reason for the legislation and its projected cost savings. However, the Senate resolution described in footnote 5 above, which passed the Senate just two months before the date of the House report, provided lump sum payments to individuals "separating" from the Capitol Police regardless of their length of service. While the Senate's approval of section 202 reflects the Senate's agreement to a longevity requirement, there is no evidence that the Senate intended to exclude from the section's coverage those individuals who satisfied the section's explicit requirements but separated from service in a form other than retirement.

Given the unambiguous language of Public Law 102-397, we conclude that since both officers who are the subject of this decision had satisfied the age and service requirements for title to a retirement annuity at the time of their separation from service with the Capitol Police, they became entitled to a lump sum leave payment under Public Law 102-397. In the case of the deceased officer, sec 1 of the act of Jan. 6, 1951, ch. 1213, Ch. I, 64 Stat. 1224, as amended (2 U.S.C. § 36a), provides for the disbursing officer of the Senate to pay to the beneficiaries of a Senator or Senate officer or employee the unpaid balance of sums due the decedent at time of death.

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